Supreme Court, U.S.
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No. 97-1133

In The

Supreme Court of the United States

October Term, 1997

LARRY D. WALLS,

Petitioner,

-vs-

COUNTY OF LOS ANGELES
OFFICE OF THE DISTRICT ATTORNEY,

Respondent.

On Petition For Writ Of Certiorari
To The California Court Of Appeals
Second Appellate District
Division Seven

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LARRY D. WALLS
In Properia Persona
3831 West 60th Street
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39 pp

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I

JURISDICTION

The respondent County of Los Angeles, Office of the District Attorney ("DA") contests this Court's jurisdiction under 28 U.S.C. § 1254(1): claiming the civil service rules that are designed to protect an employee from job discrimination are local state laws, and not subject to federal civil rights laws is wrong.

The DA asserts that Walls did not challenge his transfer and Appraisal rating as being racially discriminatory under the Civil Rights Laws, but only Civil Service Rule 25.01 (the Los Angeles County civil rights rule) is not correct. As shown by Petitioner's two civil service Petitions, Appendix I and Appendix J, (incorporated herein by reference) the violation of his civil rights is precisely what was before the Civil Service Commission (hereafter Commission) and trial judge. Thereafter, using the proper rules and law the Commission and trial judge ruled Walls had been racially discriminated against in the transfer and promotional process. The Jurisdiction of the Supreme Court to review job discrimination is basic constitutional, statutory and common law.

The DA cites Civil Service Rules 25.01, 4.12, 4.01 and 4.03, Opposition p. 4, 5, and 6 to support their claim this Court cannot review the actions of the California Court of Appeal, in a civil rights case, because these rules give the Commission discretion to grant or deny a hearing. Petitioner finds this position totally incomprehensible. Civil Service Rule 25.01, in sum, is the Los Angeles County civil rights statute, it allows an aggrieved employee to challenge an adverse job related action and show it was discriminatory based upon race, color, gender, religion, etc., or other non-merit factors (retaliation): just like Title VII of the 1964 Civil Rights Act.

The two Rule 25.01 petitions of Petitioner, to the Commission alleged racial discrimination and other non-merit factors in his involuntary transfer and Appraisal of Promotability. Thereafter, based upon Rule 4.01 and 4.03

the Commission, exercising its discretion to grant or deny a hearing, granted Petitioner's petitions and gave him a hearing. Therefore, absent a showing of abuse of discretion the Appellate Court is bound by that decision.

At the administrative level, the District Attorney conceded a prima facie racial discrimination case was established. (CT Vol. 3 p. 600). Consequently, the Court of Appeal abused its discretion in reversing the opinions of the District Attorney, Commission, and the trial judge. Thereafter, a hearing was held and pursuant to rule 4.12, the Commission found and the Superior Court Trial judge affirmed, that Petitioner had been subjected to racial discrimination, in violation of Rule 25.01 (implicit in said ruling is a violation of Title VII of the 1964 Civil Rights Act and a violation of the 14th Amendment of the United States Constitution) and ordered that he be transferred back to the Hard-core Gang Division and that his Appraisal score be raised from 80 to 100. (Appendix E, Pet. p. 35)

The DA just maliciously and capriciously refuses to do the right thing. Clearly, the DA's argument that the Supreme Court of the United States lacks jurisdiction to determine a job discrimination issue, based upon a state law, that is based upon a federal law, lacks any and all merit.

II

PETITIONER'S STATEMENT OF THE CASE IS ACCURATE

The DA's slanderous attack upon Petitioner in pgs. 7-10 of the Opposition is characteristic of their hostile attitude toward Petitioner, throughout this appeal and illustrates the lack of substance to their position. The DA for 6 years has not complied with the orders of the Commission and trial judge, when the County Counsel, legal advisor to the Commission, wrote the findings and conclusion of law for the Commission. Which in all

respects complied with the standards of *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974). The appeals by the DA in light of these facts is astounding. Petitioner submits the only inaccuracies are by the DA. Petitioner invites this Court to review the 3,158 pages of the administrative record and determine the accuracy of the facts petitioner cited. The DA's recitertations of the facts are the ones that are circumspect. The alleged facts they cited in support of the appellate decision are questionable as follows:

1. A supervisor using the terms "lynching a nigger" to an African American employee is not acceptable, just because the supervisor, thereafter, claims he was joking. The reprimand of the supervisor came after Petitioner was transferred and the supervisor was granted his 100 promotions rating, after the "lynching a nigger" comment was suppressed at his promotional hearing. (CT Vol. 4 pp. 797, 815, 818, 820; CT Vol. 13 p.2954)

2. The evidence was uncontroverted that Performance Evaluations are the foundation for a promotion and Petitioner not getting PE for two years put him at a disadvantage. (CT Vol. 4 pg. 800 Ex.8; CT Vol. 13 pp. 3030, 3035, 3037:1-12). Clearly, denying a promotional candidate the basis for the promotion effectively denies that person the opportunity to be promoted.

3. The DA represents to this court, implying that Markus's inappropriate conduct and behavior, is to be ignored, because they claim "it occurred outside the promotional rating period." However, the two acts claimed to justify the disparate treatment of Petitioner, the *Vargas* and *Russell* cases, likewise occurred outside the rating period. The *Vargas* case was tried in 1987 and the *Russell* incident occurred in August 1990. Again, the DA is trumpeting disparate treatment and asking this Court to condone it.

4. The AP committee was not informed about Markus's "lynching a Nigger" conduct or his 2 to 3 day attack upon Petitioner, to protect his promotability. Yet, Walls was denigrated, falsely, for his handling of the *Vargas* and

Russell cases. Again, another act of blatant racial discrimination. (CT Vol. 10 p. 2369; CT Vol. 11 p. 2482; CT Vol. 12 pp. 2840-41, 2855-56)

5. There was no evidence presented at the Administrative hearing that the AP Committee, raised any minority candidates appraisal scores to promote them. This was a finding of the California Court of Appeal in its decision; which was *not* supported by a cite to the administrative record.

6. The assertion that Supervisor Markus did not participate in the promotions process is not true. He wrote a false memo to Head Deputy Genelin, during the promotions process, that was used against Walls at the hearing and made other disparaging remarks against Petitioner to Head Deputy Genelin. (CT Vol. 10 p. 2357; CT Vol. 10 pg. 2230) When in fact Genelin had concluded Walls had done nothing wrong in said case. (CT Vol. 11 p. 2619; CT Vol. 12 p. 2720, 2725, 2739, ex. 30; CT Vol. 12 p. 2863-64). Also, in August 1990 Markus threatened Petitioner he would be transferred for the dispute with him. His threat was carried out by higher ups. (CT Vol. 8, p. 1841; CT Vol. 10 p. 2236; CT Vol. 12 pp. 2744-45, 2814, 2855; CT Vol. 13 pp 3025, 3028-29, 3101)

7. The fact Ms. Walker, an African American, received a 100 AP is irrelevant as to whether or not there was racial discrimination as to Petitioner. Surely, the DA is not suggesting this excuses its wrongful conduct.

8. The suggestion that it was O.K. to allow the out of rating period use of the *Vargas* and false *Russell* case allegations, against Walls, but to suppress Markus's inappropriate misconduct at the promotional hearing, is again, a blatant example of the reasons why the Commission and trial judge ruled that Petitioner was subjected to racial discrimination. (CT Vol 4 p. 797, 815; CT Vol 13 pp 2921-24, CT Vol 13 pp 3017-18, 3010)

9. The DA initially claimed Walls was rated low for his handling of *Vargas* and *Russell*. Then changed this position to be a lack of understanding of ethical issues, only after Walls debunked the *Vargas* and *Russell* mishandling

reasons. The plain truth is the DA discriminated against Walls because of his color and retaliated against him for the letter he wrote to the Los Angeles Times disagreeing with the DA's reversal of the Vargas conviction. (CT Vol 13 p. 2947, 2949; CT Vol 11 p. 2633; CT Vol 12 pp 2921-24, 3017-18)

10. The California Court of Appeal misread the record and miscited the evidence. The record, clearly, showed the DA management personnel, that made the decision on the transfer and the AP: Markus, Allen, Genelin, and Murphy were aware as much as 7 months prior to the transfer and AP that Markus had used "lynching a nigger" and Walls had not received his performance evaluations for two years. (CT Vol. 12 pp 2855-56l.; CT Vol 13 pp 2921-2924; CT Vol 8 pp 1859-1862; CT Vol 4 pp 869-877)

11. and 12. The alleged legitimate business reasons, by the DA for the discrimination against Petitioner for the transfer and low AP were rejected, by the Commission; which they have the discretion to do, as a pretext to cover-up their racial discrimination and retaliation against Walls. Thereafter, these decisions were sustained by the trial judge. No more was required by Petitioner to prevail.

On February 10, 1992, Petitioner filed objections to the hearing officers advisory opinion. (CT Vol 3 p 539) On July 1, 1992, the Commission sustained Petitioner's objections (Appendix F, Pet. p. 37; Appendix k) and subsequently, ordered Petitioner's Appraisal score changed from 80 to 100 and that he be transferred back to the Hard-core division. The Commissions orders were based upon the Commission's reading of the record. (CT Vol 3 p 539, 570).

REASONS FOR GRANTING THE WRIT

I

PETITIONER ACCURATELY STATED THAT HE WAS NOT REQUIRED TO DEMONSTRATE AN ADDITIONAL NEXUS BETWEEN HIS PROTECTED STATUS AND THE ADVERSE EMPLOYMENT DECISIONS

Petitioner has accurately stated the record and the law. The DA has apparently misread the California Court of Appeal decision and misstates the Petitioner's Brief.

The appeal decision states Walls did not prove a prima facie case. (Appendix A, Pet. p. 21)

This position was wrong. Petitioner proved a prima facie case and the DA conceded so in their closing argument. (Ct Vol. 3 p 600). Therefore, *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993), as cited by petitioner, is the law: no additional evidence had to be presented to show a nexus, since the fact finders (the commission and trial judge) ruled in his favor and summarily rejected the DA's claimed legitimate business reasons.

The DA is playing ostrich, by burying its head in the sand and ignoring the language in the Appellate decision. The Appellate decision, at Appendix A, Pet. p. 22, specifically states an additional nexus was required to be proven between, "Markus's racial comments and Walls's transfer. Likewise, since Markus was not involved in evaluating Walls's Grade IV application, there is no causal connection between his AP score and Markus's comments". This one act was not alleged to be the only racial discriminatory act. The evidence was that a pattern of disparate treatment was shown by the DA from 1987 to 1990. It was upon the total evidence during this period that the Commission and trial judge based their decisions. Consequently, *Hicks* establishes no additional nexus had to be shown. (CT Vol. 1 p. 1 to Vol 13 p. 3158).

The Appellate court finding is inconsistent with the findings of the Commission and trial judge, that is why it

violates *Mixon v. Fair Employment and Housing Commission*, 192 Cal. App. 3d 1306, (1987); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L.Ed. 2d 668, 93 S. Ct. 1817 (1973); *St. Mary's Honor Center v. Hicks*, 509 U.S. 407, 125 L.Ed.2d 407, 113 S. Ct. 2792 (1993) and is contradictory to the facts and evidence.

Furthermore, the Appellate decision, at Appendix A, Pet. p. 19, states Petitioner was required to prove that all 129 applicants, including Markus, "were also undeserving" of their higher AP scores to prove his AP score was racially improper. Hence, the raising of his AP score to 100, equal to Markus, was "unfair to the 129 applicants, since it was not based on whether Walls earned a higher score than the AP committee gave him". That is precisely what the Commission and trial judge decided, based upon the evidence, Petitioner was racially discriminated against, a non-merit factor, so his AP was improper, so based upon the performance evidence in the record, they found Petitioner deserved a 100 AP score.

The reasoning of this Appellate position flies in the face of all Civil Rights legislation. The finding that the Commission and trial judge decisions of racial discrimination must be set aside, because other promotional applicants did not challenge improper conduct, is tantamount to saying that a slave that challenges slavery, and gains his freedom, cannot be freed, because the other slaves did not protest being enslaved, is unAmerican.

Petitioner correctly stated, once he established the prima facie case of racial discrimination and demonstrated the DA's alleged legitimate reasons for disparate treatment were a pretext to coverup racial discrimination, no additional nexus was required.

II

THE COURT OF APPEAL ABUSED IT'S DISCRETION BY APPLYING INDEPENDENT JUDGMENT AND NOT THE SUBSTANTIAL EVIDENCE TEST

The California Court of Appeal abused its discretion by applying Independent Judgment and not the Substantial Evidence Test, to the decisions of the Commission and trial judge. The DA has even cited factual conclusions made by the Appeal Court without any cite to the actual administrative record. Clearly, an act of Independent Judgment and not evidence relied upon by the Commission and trial judge.

The law is clear that "when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trier of fact". *Bowers v. Bernards* (1989) 150 Cal. App.3d 870, 879. The Appellate court found facts different than the Commission and trial judge and changed their decisions. This was an abuse of discretion.

In this case, Petitioner presented substantial evidence to support the claim of racial discrimination, and that the DA's claims of legitimate business reasons, for its wrongful conduct, were a pretext to hide its discrimination in violation of Title VII of the 1964 Civil Rights Act and Rule 25.01 of the County of Los Angeles Civil Rights rules.

The Appeal Court is bound by the factual findings of the Commission and trial judge, interestingly, the DA nowhere in its Opposition argues that the appeals court is not bound by the factual findings of the trial judge. The DA only attacks the findings of the Commission. Why? The trial judge found that the evidence of racial discrimination and other "animus" against Walls was not only supported by substantial evidence but, indeed, was "uncontroverted" by the DA at the administrative hearing. (Appendix D, Pet. p. 29)

The DA argues that the hearing officer's advisory opinion is binding on the Commission as to the facts. (Opposition p. 13, n. 2) This argument highlights the

ingeniousness of the DA's position throughout this action or a lack of knowledge and understanding of the Civil Service Rules and Procedures. The DA refuses to accept the wrongfulness of its actions. A simple reading of rule 4.13 of the Civil Service rules makes this quite clear. The relevant text of Civil Service Rule 4.13 is as follows:

> *FINDINGS AND DECISIONS* A. If the hearing . . . , is not before the full Commission (This hearing was not), the hearing board shall (hearing officer), within 30 calendar days from the conclusion of the hearing, submit a written or oral report (advisory opinion) to the Commission *for its approval. If* the Commission accepts the findings of fact contained in such report, it need not read the record of the hearing. If the Commission *declines* to accept such findings (as done herein), *it must read the record* (as done herein), or hold a hearing de Novo. . . . (*Appendix F, Pet. p. 38*)
>
> C. If a party requests findings of fact and conclusions of Law, the Commission may either adopt the report of the hearing board as its proposed findings and conclusions, direct one of the parties to prepare proposed findings and conclusions, or *draft its own findings or conclusions*. . . . (CT Vol. 3 p. 530; Appendix F, Pet. pp. 37-38)

The Commission exercised its discretion, under rule 4.13, sustained Petitioner's objections to the hearing officer's advisory opinion and rejected same (CT Vol 3 p 539; Appendix K). This act nullified any effect of the hearing officer's conclusions. Thereafter, the Commission read the entire testimonial record and rendered an opinion: with factual findings and conclusion of law; that the transfer and low AP were racially discriminatory and improper. Subsequently, ordering the County Counsel, its legal advisor, to draft findings of fact and conclusions of law consistent with its decision. (Appendix G, Pet. p. 40)

The DA cannot, in good conscience, represent to this Honorable Court, that the Commission rendered its decision for rejecting the hearing officer's advisory opinion "Without explanation". (Opposition p. 13, n. 2). The Commission stated its decision was based upon the objections of Petitioner to the hearing officer's advisory opinion.(Appendix K, incorporated herein by this reference)

The DA knows or should know that the Commission was the fact finders, the trial judge sustained their factual findings, and the Appellate court was bound by law to review the record to determine if substantial evidence supported their decisions. The trial judge, which the DA doesn't argue against, found said evidence "uncontroverted", so how the Appellate court can reverse the trial judge, Commission, and the hearing officer, who found that Markus received preferential treatment and did not deserve the 100 promotional rating, but received it, is not discriminatory is astounding. (CT Vol. 3 pp. 522-23).

III

CONCLUSION

If the constitution of America stands for anything, if the Civil Rights Act of 1964 means anything, if Rule 25.01 of the Civil Service Rules means anything, if due process and equal protection of the law means anything, if human rights mean anything, if justice is to prevail, this Honorable Court will grant the Writ of Certiorari to review the blatant denial of Petitioner's constitutional rights, because the Decision rendered by this Appellate court is contrary to Federal law.

Respectfully submitted,

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APPENDIX I

WILLIAM D. RUFFIN

Black Employees Association
5462 Crenshaw Blvd.
Los Angeles, California 90043

Representative for the Appellant.

In the Matter of the Invountary [sic] Transfer of Larry D. Walls District Attorney III	)	BEFORE THE CIVIL SERVICE COMMISSION COUNTY OF LOS ANGELES

(Filed Oct. 19, 1990)

INTRODUCTION

The Appellant in this action is a District Attorney, Grade III. The Appellant Charges, District Attorney, Ira Reiner, et, al, (Michael Genelin, Head Deputy, John D. S. Allen, Assistant Head Deputy, and Joseph Markus, Deputy-in-Charge) with violation of Civil Service Rule 25.01, racial discrimination, in the action to "involuntary transfer" him from the Compton, Special Operations Unit (Hard-core Gangs), effective October 8, 1990.

STATEMENT OF FACTS

District Attorney Walls (Appellant) has suffered the following "systemic" racial discrimination since his appointment to the Grade III position:

- On or about January 14, 1988, the Appellant received his Grade III appointment as a result of a Civil Service Commission appeal of his Appraisal of Promotability.

- On or about February 1, 1988, the Appellant was transferred to the Compton, Special Operations Unit, Hardcore Gangs.

- On or about April 1, 1988, the Appellant received notification of his final appointment to the Grade III. *It took another sixteen months for him to receive proper salary payments.*

- On or about June 1, 1989, the Appellant was passed over for the position of Deputy-in-Charge, after receiving a 90% conviction rate. *Joseph Markus (White male) was brought in from the Orange County District Attorney's Office and given the position.*

- On or about November 3, 1989, the Appellant was addressed with a racial slur from the same Joseph Markus, to wit: *"We have a rope, all we need in [sic] a nigger, and you are it."*

- On or about April 5, 1990, the Appellant received his Report to Probationer for the rating period April 1, 1988 to September 30, 1988. *The Appellant has not received Performance Evaluations for the rating periods of April 1, 1988 thru April 1, 1989 nor April 1, 1989 thru April 1, 1990.*

- On or about August 15, 1990, Joseph Markus started a verbal confrontation with the Appellant, in which he stated, *"I'm going to get you out of here, I'm going to get you transferred.*

- On or about September 24, 1990, the Appellant received written notice of his transfer from the Compton, Special Operations Unit, *without reasons for such transfer.*

– On or about October 1, 1990, the Appellant filed a rebuttal to the transfer action to District Attorney, Ira Reiner.

LIST OF EXHIBITS

1. Report to Probationer
2. Memorandum of Transfer
3. Appellant's rebuttal to Joseph Markus's letter

STATUTES VIOLATED

1. Los Angeles County Civil Service Rule 25.01.
2. Title VII of the Federal Civil Rights Act of 1964. (Disparate Treatment/Racial Discrimination)
3. Civil Service Reform Act of 1978. (Unfair Treatment)
4. Title VII, Section 704(a). (Reprisal and Retaliation)

CONCLUSION

The Appellant presents good prima facie showings of racial discrimination, in his treatment, by the District Attorney's Office, since his promotion to the position of District Attorney, Grade III. Since that time the department's actions have been arbitrary, capricious, fraudulent, unfair, and racially motivated. The Appellant has been the victim of "systemic" racial discrimination, up to

and inclusive of the involuntary transfer, and he requests a hearing in this matter.

DATED: OCTOBER 16, 1990

Respectfully submitted;

/s/ William D. Ruffin
William D. Ruffin
Director, Labor Relations

APPENDIX J

[logo]

(Filed Nov. 1, 1990)

Clyde Johnson
PRESIDENT

5462 Crenshaw Boulevard
Los Angeles, California
90043
(213) 299-9560

Civil Service Commission
522 Hall of
Administration
222 North Grand Ave.
Los Angeles, California 90012

October 30, 1990

Dear Commissioners:

District Attorney Larry D. Walls, by and through his representative, the Black Employees Association, appeal his Appraisal of Promotability score of 80% for the position of District Attorney IV.

D.A. Walls presents the following contentions to his charge of racial discrimination, in violation of Civil Service Commission rule 25.01:

- Three candiates [sic] from his office received ratings of 100% and their production and job performance were far lower than his.

    1) D.A. Walls handled harder cases than those three individuals.

    2) D.A. Walls handled more cases than those three individuals.

    3) D.A. Walls's conviction rate was higher than those three individuals at 90%.

- The department has purposely not rated D.A. Walls over the last two rating periods in an effort to undermine his ability to promote.

  Exhibit 1 is D.A. Walls's last performance document, a Report to Probationer for his probationary period of 4/1/88 to 9/30/88, dated and received March 5, 1990.

- D.A. Walls should receive an A (Exceptionally Qualified) in the areas of Work Ethic, Professional Relations, Adaptability, and Managerial Ability. Exhibit 2 supports those changes.

- D.A. Walls has gone above and beyond the call of duty to enhance the image and position of the County District Attorney's Office both in the legal and lay community. (Exhibits 3-7)

D.A. Walls request an immediate upgrade in his score to 100%, or a hearing to determine the blatantly discriminatory treatment he has become a victim of through the actions of the department.

cc: Larry D. Walls
3831 West 60th St.
Los Angeles, Ca. 90043

Professionally yours,

/s/ William D. Ruffin
William D. Ruffin
Director, Labor Relations

APPENDIX K

FRED WILLIAMS, CHIEF LEGAL DIVISION LOCAL 660, SEIU, AFL-CIO 950 WEST WASHINGTON BLVD LOS ANGELES, CA 90015 PHONE: (213) 748-9000	CIVIL SERVICE COMMISSION COUNTY OF LOS ANGELES CASE NO. 90-371 & 90-386
IN THE MATTER OF LARRY D. WALLS, Appellant v OFFICE OF THE DISTRICT ATTORNEY, Respondent	OBJECTION TO HEARING OFFICER'S REPORT; REQUEST FOR ADOPTION OF APPELLANT'S CLOSING BRIEF AS FINDINGS OF FACT AND CONCLUSIONS OF LAW; OR TRIAL DE NOVO, TRANSCRIPTS OF TESTIMONY OF DAN MURPHY AND MICHAEL GENELIN; EXHIBITS IN CASE NOS. 90-371 & 90-386.

The Appellant hearby submits the following objections to the report of Leonard S. Kimmel, Civil Service Hearing Officer. The hearing in the above two consolidated matters were held on May 30, June 25, July 16, July 26, August 30, October 8, October 9, and December 2, 1991, pursuant to orders of the Civil Service Commission of the County of Los Angeles, upon the timely appeals of Larry D. Walls, Appellant. *In Case No. 90-371,* concerning the discriminatory involuntary transfer of Appellant by the District Attorney, Respondent, and *Case No. 90-386,* concerning the discriminatory and improper appraisal of promotability score received by Appellant on the Grade IV promotional examination. The parties were given an

opportunity to call, examine and cross-examine witnesses and enter exhibits into the record of these proceedings. The parties were represented as follows:

For the Appellant – Marvin Hamilton, Esq.

For the Respondent – David Dahle, Esq.

1. The issues

As framed by the Civil Service Commission, the issues in these cases are as follows:

Case No. 90-371

1. Was the Appellant's transfer from Compton racially motivated?
2. If No. 1 is true, what is the appropriate remedy?

Case No. 90-386

1. Was the Appellant properly rated on the appraisal score received in the examination for Deputy District Attorney IV?
2. If No. 1 is not true, what is the appropriate remedy?

II. OBJECTIONS/ISSUES TO BE DECIDED

1. *Is the hearing officer's findings of fact contrary to the evidence and testimony produced at the hearing? Yes!*
2. *Is the hearing officer's conclusions of law contrary to the evidence and the law? Yes!*
3. *Did the hearing officer abuse his discretion in denying the admission of relevant evidence? Yes!*

1. DISCUSSION OF HEARING OFFICER'S FINDINGS OF FACT AND DISCUSSION OF THE EVIDENCE.

The Appellant objects to the hearing officer's findings of fact, because there is *no nexus* between his findings of fact, his discussion of the transfer and promotional rating. The hearing officer, apparently has substituted his opinion and conclusions for the testimony presented in the cases. The following statement addresses the inconsistencies in the hearing officer's opinion and the facts in the case;

1. *Paragraph 1, p. 2.* The hearing officer's *bias* is shown by his ommission of the fact that the Grade III Appraisal of Promotability appeal, settled in 1988, was based upon *racial discrimination.*

2. *Paragraph 3, p. 2.* The hearing officer is in *error* by stating the *Vargas,* rape/murder trail [sic] was in 1988, while Appellant was in the Gang Unit. This trial took place in 1986/87, it was *before* the Grade IV rating period (1988-90), consequently, references thereto are *irrelevant.* Also, this statement is contrary to the facts and the Department's final argument. (*Genelin transcript, p. 19, L. 8-17, p. 42*)

3. *Paragraph 4, p. 3.* It was *error* for the hearing officer to find the meeting with Lynch was for misuse of informants. The meeting was to discuss an issue of discovery in the *Vargas* case and whether a new trial should be granted. Also, Walls was not laughing when called "nigger".

4. *Paragraph 6, p. 4, is incorrect,* the motion for new trial was filed prior to November 1989, and before the "nigger" incident. There was *no testimony* about the grounds for the motion for new trial. Additionally, Appellant was found to have done *nothing wrong* or *improper* in the *Vargas* case. (*Genelin transcript, p. 42*).

5. *Paragraph 7, p. 4, misstates the evidence.* Appellant never told Genelin the reversal of the conviction placed him under great stress. The testimony was that the investigation into the *Vargas* case and prior racial discrimination caused Appellant great stress, because the office allowed the public perception to exist that he had done something unethical. Also, he requested to know the status of the investigation and explained his reasons for writing the letter of December 18, 1989. (*Genelin transcript, p. 20-22*).

6. *Paragraph 8, p. 5, is incorrect.* Appellant never showed any reaction to Mr. Murphy. Further, Mr. Murphy's testimony in this respect is contradicted by his letter of February 2, 1990. (*Exhibit 35*)

7. *Paragraph 9, p. 5, is incorrect.* Appellant did not on July 27, 1990, a Friday, request Mr. Marcus to assign an investigator to serve subpoenas, nor did Marcus instruct Appellant to make sure subpoenas were served. Mr. Marcus was informed about the *Russell* case on July 24, 1990, and on July 26, 1990, Appellant had subpoenas issued and given to an investigator on said date. (*Exhibit E*).

8. *Paragraph 13, p. 6, is incorrect.* The defendant in the *Russell* case was *convicted of attempted voluntary manslaughter* and second degree murder, a legally inconsistent

and unlawful verdict. Additionally, Greta Walker never testified assigned deputies always arranged for witness subpoenas. She testified, as did Appellant, and Barbara Turner, the witness coordinator first attempts service, then if unsuccessful the assigned deputy has a D.A. investigator serve subpoenas.

9. *Paragraph 14, p. 7, is totally contrary to the testimony* and *evidence* at the August 13, 1990, meeting. At said time, Appellant explained what happened in the *Russell* case. Thereafter, Mr. Genelin and Mr. Allen concluded that Appellant *had done the appropriate thing* in the *Russell* case. (*Exhibits E and 29*).

10. *Paragraph 15, p. 7, completely omits* the fact Mr. Marcus started the "very loud and contentious argument" with Appellant in Appellant's office. The testimony was that Marcus continued the harassment for two days. There was no testimony Appellant accused Marcus of these arguments because Marcus said he was black. Also, the *statement* that *"Walls agreed that he and Marcus were not able to work together"* is *not supported by any testimony.*

11. *Paragraph 16, p. 8, is totally false.* The transfer letter of September 24, 1990, *never mentioned* any of these reasons as a rationale for the transfer of Appellant. (*Exhibit 2*).

12. *Paragraph 17, p. 8, is incorrect.* In October, 1990, Appellant filed a grievance to this transfer; thereafter, it was granted and he was transferred back into the Gang Unit downtown. Subsequently, due to doctor's orders, Appellant was placed upon a two-month stress medical leave. He was not granted a leave of absence by the office.

13. *Paragraph 20, p. 10, is not proper.* The *hearing officer omits* that Mr. Genelin testified Mr. Marcus, a candidate for the Grade IV promotion, assisted him in his evaluation of Appellant in the appraisal process. Said act was a clear *violation of Civil Service rule 7.25* and *District Attorney Special Directive 90-04.* (*Exhibit 12; Genelin transcript, p. 29, L. 1-26, p. 30, L. 1-28, p. 31, L. 1-13*).

14. *Paragraph 23, p. 11,* illustrates there was *no objective appraisal rating standard,* as required by *Civil Service rule 2.57.* The Appraisal of Promotability Committee meeting to establish a "level playing field" is not in compliance with *rule 2.57,* without a comparative analysis of all Grade IV candidates. Said statement shows that this appraisal of promotability process was totally subjective, arbitrary, capricious and a *violation of Civil Service rules 25.01* and *1.02.* Gregory Thompson, Appraisal of Promotability Committee chairman, testified the only objective factor considered was professional skills.

15. *Paragraph 24, p. 11,* is a clear showing of the *hearing officer's bias* and *abuse of discretion.* Herein, he finds the AP committee found that Genelin showed partiality (All deputies he supervised except Appellant were rated 100 or all A's). These ratings by Genelin were inconsistent with all the Grade IV applicant's objective work performance history. (*Exhibits 17-24*).

16. *Paragraph 25, p. 11.* These *opinions* by the District Attorney staff, and accepted by the hearing officer, were *not supported* by any testimonial objective facts. The statement by the hearing officer is totally unsupported by any evidence. *Exhibit 35,* memorializing, the Murphy meeting

with Appellant and the American Bar Association, informal opinion 1067 (1978), says a deputy district attorney is entitled to express an opinion different than the chief prosecutor and it is not unethical.

17. *Paragraph 28, p. 13, illustrates* the *biased* and *non-objective attitude* of this hearing officer. The *"statistical evidence"* showed that Appellant *completed* and *tried* more *cases* than all but three candidates for the Grade IV promotion, during the rating period. (*Exhibits 17-24; Genelin transcript, p. 26, L. 13-15*)

Additionally, Appellant was *prejudiced* by his performance evaluations being "somewhat delayed", two years, a clear violation of *Civil Service rule 20.02*. Especially, when all other Grade IV candidates received outstanding performance evaluations during this period. The prejudice was *detrimental* because peformance [sic] evaluations were the foundation for the appraisal ratings and without performance evaluations Appellant did not get a *fair* opportunity to compete. (*Genelin transcript, p. 31, L. 1-13, p. 41-42; Exhibits 14 & 22*).

Furthermore, the *hearing officer* displayed his *bias* by his *gratuitous aside,* that the Appellant "apparently" submitted his name and statistics as qualifying him to be considered for the Prosecutor of the Year award. This fact is totally *irrelevant* to the issues in this case.

The foregoing *misstatements of fact, omissions of law,* and examples of *personal bias* warrant a *review* of the *record* in this hearing or a *trial de novo*. Surely, a finding should be made that there is *no nexus* between the hearing officer's *statement of facts* and his *findings of fact* herein.

1A. OBJECTIONS TO THE DISCUSSION OF THE INVOLUNTARY TRANSFER.

Appellant objects to the findings and conclusions in the hearing officer's transfer discussion as follows:

1. *Paragraph 1, p. 13.* The hearing officer *disregards three acts* of unrebutted and unexplained *disparate acts*: (1) The grade III racial discrimination complaint was settled and Appellant was promoted; (2) Appellant was passed over for the Deputy-in-Charge position, in favor of a white male with less management, trial, seniority, and case experience. (*Genelin transcript, p. 37, L. 1-12*). Further, Appellant could not file a civil service appeal on this action (*Exhibit 19*); (3) Appellant was prejudiced by management's failure, for two years, to provide him with mandated performance evaluations, when substantially all other Grade IV candidates were provided with outstanding peformance [sic] evaluations. This civil service rule violation was intentional, Appellant had used outstanding performance evaluations to win his Grade III appeal (*Genelin transcript p. 31, L. 1-13, p. 41-42*)

2. *Paragraph 2, p. 14.* The *hearing officer's conclusion* that the "nigger" incident occurred a year prior to the transfer, thus, it is not a part of the sequence of events leading up to the transfer, is *patently wrong*. Joseph Marcus exhibited *racial bias* by his statement, his conduct was condoned by management and hence imputed to them. (*Murphy transcript, p. 40-42*).

3. *Paragraph 3, p. 14.* The *hearing officer,* obviously, has *substituted* his *opinion for* the *testimony* in the case and argument of the Department. According to the testimony, Appellant had done the appropriate things in the *Russell*

case (*Exhibit 2*). The testimony was that the issuing of subpoenas, serving of subpoenas, or the dismissal of the *Russell* case, *did not matter,* and was not a part of the decision to take action against Appellant. (*Murphy transcript, p. 57, L. 24-28, p. 60-61, p. 68, L. 1-24*).

The Appellant is accused by the hearing officer of not admitting error. *This opinion by him is wrong*. The testimony was that Appellant did nothing wrong. The hearing officer opines Appellant was at fault for the argument between he and Marcus. However, all the testimony was that Marcus started the confrontation to keep Appellant from sending a reply memo correcting the false statements Marcus had made in reference to the *Russell* case.

The hearing officer then finds Marcus acted "unprofessionally", but then he *excuses Marcus's conduct.* This position is totally *contrary to fair reasoning,* Marcus was the supervisor who started the confrontation, and stated, "I'm going to get you out of here, I'm going to get you transferred." Plus, Marcus had previously called Appellant a "nigger". As a supervisor, his acts and conduct, when condoned, becomes the acts, words, statements and position of the District Attorney. (*Murphy transcript, p. 43, L. 17-25*).

4. *Paragraph 4, p. 15. The hearing officer's opinion is contrary to all evidence* and the final argument of the Department. Again, *disparate treatment is approved.* Query: Q: Why is Mr. Marcus's conduct ignored? *The only objective fact is that he is a white male supervisor.* The testimony was that Mr. Marcus was loud, aggressive, and abusive as a supervisor to Appellant, Greta Walker, Barbara Turner

and other deputies and acted improperly. (*Murphy transcript, p. 43, L. 17-25*).

Also, travel distance is important in the District Attorney's Office. There is a policy against placing deputies further than three superior courts from their home. The Long Beach court is five courts away from Appellant's home. Additionally, removing Appellant from the Gang Unit was prejudicial and a loss of prestige. The Gang Unit is a highly specialized and prestigious unit. (*Genelin transcript, p. 20, L. 4-8*).

In addition, in the Grade IV process only *10 percent* of the *candidates* were *Hardcore deputies,* but *30 percent* of those receiving *100 AP scores were from this unit.* Furthermore, Appellant was eventually transferred from Santa Monica to the West L.A. Branch Office. He was there assigned to do preliminary hearings, a first-year no experience hiree position. *The hearing officer has ignored* the *emotional, psychological* and *physical effects* that *discrimination* and *disparate treatment* can have on a person subjected to such treatment.

5. *Paragraph 5, p. 15. The weight of the evidence did not support the hearing officer's conclusions.* A *preponderance* of the evidence proved Appellant has been subjected to *discriminatory, improper* and *disparate treatment since 1988.* (*Exhibits 1-44*).

The hearing officer concludes that Appellant and Marcus were equally at fault. Consequently, fairness would dictate that they receive equal treatment. Therefore, if Appellant was transferred for his conduct, then

Marcus should have received equal treatment. The treating of Appellant differently violates *Civil Service rule 25.01.*

1B. OBJECTIONS TO THE DISCUSSION OF THE APPRAISAL OF PROMOTABILITY SCORE.

Appellant, initially, agrees with the hearing officer's conclusion that the preponderance of the *evidence proved* a *violation* of *rule 25.01, 1.02, and Title 7 of the Civil Rights Act,* in the Appraisal of Promotability rating. However, having so found, Appellant fails to comprehend and objects to his final decision. He concludes in spite of the proven *discrimination* he will not *follow the law* and (1) invalidate the entire Appraisal of Promotability process, or (2) raise Appellant appraisal score equal to that of other deputies that have *received preferential treatment.*

Appellant objects to the hearing officer's discussion and findings in this respect in the following manner:

1. *Paragraph 1, p. 16.* The *hearing officer disregards* the fact that Appellant challenged the entire appraisal process as being *discriminatory, arbitrary, capricious* and in *violation* of *Civil Service rules 25.01, 1.02, and Title 7 of the Civil Rights Act.* The appraisal of the 32 Grade IV candidates that received 100 appraisal scores were in issue, not just the 12 Hardcore Gang deputies, including Joseph Marcus.

The District Attorney's objective *"statistical records"*, presented by Appellant, *proved* during the Grade IV rating period, Appellant *tried* and *completed more cases* than all but three candidates rated 100. (*Exhibits 17 & 22*). Further, Appellant's evidence showed that Joseph Marcus

violated Civil Service rule 25.01 and District Attorney *Office Policy rule No. W, that prohibits racial slurs.* Yet, Mr. Marcus was given a 100 AP score, clearly this is conclusive proof of *disparate treatment.* (*Murphy transcript, p. 40-42, p. 43, L. 17-25, p. 45, L1-17*).

2. *Paragraph 2, p. 16, is the biased opinion* of the hearing officer and *not the evidence.* Appellant was not "at fault" in the *Russell* incident. All the evidence was that Marcus started the verbal altercation with Appellant. Additionally, the evidence showed he attacked Greta Walker, Barbara Turner, and other deputies. More importantly, the *Russell* incident was *irrelevant* to the appraisal process, it occurred *after* the *AP period* and *the AP score* was already given. (*Genelin transcript, p. 20, L. 13-15, p. 44, L. 1-7*). Furthermore, Mr. Murphy, Appraisal Committee member and Director of Special Operations, stated this case was not known nor considered as an appraisal factor. (*Murphy transcript, p. 13, L. 1-25, p. 40-42*).

3. *Paragraph 3, p. 17.* The hearing officer established a *standard of proof* that is *beyond a preponderance* of the evidence. This is contrary to the *Civil Service burden of proof standard.* Such a position is not supportable. By law the *Appellant, did not* have to *prove* that *all* Grade IV candidates that received 100 AP scores, were over-rated to prove that he had been subjected to *disparate treatment* and the entire AP process and list had to be invalidated. Appellant *only* had to *prove* that he had *not been fairly* and *objectively evaluated* to show a violation of *Civil Service rule 25.01* and he was entitled to a 100 AP score. *This was done.*

Appellant's burden was to prove objectively, he was as qualified for a promotion as the other 32 recipients of

100 AP scores, as per *Equal Employment Opportunities Commission dec. No. 76-26 (August 26, 1975)*. The case, *Crocker v. Boeing Co. (1977, EDPA), 437 Fed. supp. 1138,* held:

> *"(An) employer's failure to promote (a) black employee violated Title 7, where two whites were promoted during a relevant time period, who were no better qualified than (a) black employee."*

Herein, Appellant produced, *uncontradicted,* District Attorney *records* that proved he *tried* and *completed more cases,* including murders, during the rating period, than all but three of the Grade IV candidates that received 100 AP scores. (*Exhibit* 22).

The *hearing officer finds disparate treatment* in favor of Joseph Marcus and others, Appellant *"was an extremely productive, if not the most productive attorney in the Hardcore Unit"*. (*Hearing officer's findings, p. 13 & Exhibits 17 & 22*). This position is not disputed. In light of these facts it is inconceivable how the hearing officer can make such a finding, and in the same breath, say Appellant is not entitled to the *same 100 rating* when he has *objectively performed better.*

The *hearing officer's* position totally *violates* his *oath* of *fairness* and *impartiality.* He finds discrimination, but says it's okay! This is wrong. His position, by way of example, is tantamount to saying:

> *Two murderers are equally guilty of a murder but because one is a white male and liked, and the other is a black male and disliked, it is all right to excuse the murder of the white murderer, but justifiable to execute the black male for the murder.*

This *double standard of justice* is exactly what is prohibited by the *Civil Service rules, Title 7 of the Civil Rights Act, the equal protection* and *due process clauses of the United States Constitution.*

4. *Paragraph 4, p. 17.* The hearing officer *again misplaces* his reliance on the *irrelevant Russell case.* This case was after the AP scores and not relied up in reaching the AP decision. (*Genelin transcript, p. 44, L. 3-10, and Murphy transcript, p. 33, L. 1-25, p. 40-42*). Additionally, there was *no evidence* from any employee that *Appellant had a "significant problem with other persons in the office".* To the contrary, Appellant's past peformance [sic] evaluations showed he had exceptional professional relations. Also, Appellant introduced *16 declarations* from *deputy district attorneys, police officers* and *office staff* attesting to his *outstanding* professional relations. (*Exhibit 16*). The comment about the police officer in *Russell* is irrelevant and was never testified to in the hearing.

5. *Paragraph 5 & 6, p. 18-19, are incomprehensible.* The hearing officer *finds discrimination,* but refuses to properly rate Appellant. Appellant's *work ethic* and *professional relations* grades should have been an *A.* The hearing officer stated *Appellant* was the *"most productive attorney in the Gang Unit".* His decision not to give Appellant all A's is *contradicted* by this *opinion* and all the objective evidence. The rationale used to lower Appellant's grade, by the office and the hearing officer, that Appellant did not *"understand and appreciate"* the District Attorney decision in the *Vargas* case, shows poor work ethics, is not supported by any objective evidence, this is *merely management opinion.* Especially, when the hearing officer *prohibited evidence proving* Appellant had an exceptional

understanding of professional ethics in the *Russell* case. (*Murphy transcript, p. 54-59*).

The Appellant's *opinion* was *consistent* with the opinion of other *management personnel*. The District Attorney's *Policies* and *Procedures Manual, Basic Criteria for Charging p. 1*, says that deputies are supposed to independently evaluate and weigh evidence. Furthermore, *American Bar Association, informal opinion 1067 (1978)* states:

> *"The fact that a deputy prosecutor's opinions may be in conflict with those of the chief prosecutor is not an ethical concern, but rather one which involves the terms of employment agreement." p. 6, ETHICS AND RESPONSIBILITY FOR THE CALIFORNIA PROSECUTOR.*

6. *Paragraph 7, p. 19.* The evidence was *devoid* of any *rule 2.57 rating standard*. The hearing officer finds *disparate treatment* then *refuses to raise* Appellant's score equal to the Grade IV candidates that were arbitrarily given 100. This position is a *failure* of his *duty of fairness* and it violates the letter and spirit of *Civil Service rule 25.01, 1.02, and Title 7 of the Civil Rights Act.*

2. DISCUSSION TO OBJECTIONS SHOWING CONCLUSIONS OF LAW ARE CONTRARY TO CIVIL SERVICE LAW.

Appellant *objects to the conclusions of law* in the decision that are *inconsistent* with the law as he has argued in the foregoing *discussion of the statement of facts, findings of fact, transfer* and *appraisal*. Particularly, Appellant submits that the facts, testimony and exhibits presented in the hearing, *proved beyond a preponderance* of the evidence his

transfer was *racially motivated, discriminatory* and *improper*. Consequently, the only *just, fair,* and *appropriate legal remedy* is to *transfer* Appellant back into the Gang Unit in Compton.

Appellant's *evidence proved by a preponderance* his Appraisal of Promotability was *improper*. Surely, the only *fair* and *legally just remedy* is to *raise* his Appraisal of Promotability score to 100 or all A's in each of the rating categories. The hearing officer knew Chief Deputy Gregory Thompson testified and *Exhibit 41* showed that only those given 100 AP scores will be promoted.

Furthermore, Mr. Thompson testified that with the 80 score Appellant was at a substantial disadvantage and would not be promoted. In addition, *Greta Walker* and *Barbara Turner,* two Grade IV candidates that worked with Appellant in Compton, *testified* he should have *received a 100 score,* the same as they and Joseph Marcus. Also, Thomas Romeyn, Assistant Head Deputy, Compton Branch Office, testified he has known, worked with and observed Appellant's work for years, it was his opinion Appellant should have been promoted to the Grade IV status.

3. DID THE HEARING OFFICER ABUSE HIS DISCRETION IN DENYING THE ADMISSION OF RELEVANT EVIDENCE? YES!

The *Appellant* is *entitled* to a *fair* and *impartial hearing*. *Civil Service rule 4.07*. From the *beginning* of this hearing the hearing officer *displayed his bias* and a desire to favor one side as opposed to the other. On May 30, 1991, the hearing officer initially showed his bias. On said day,

upon first meeting Appellant, the hearing officer *stated* to Appellant, *"Oh, so you're the troublemaker,"* prior to any evidence being taken in the case.

A Civil Service hearing is the opportunity for an aggrieved party to present all relevant evidence. Appellant submits to this commission, that this *rule* was *violated* and the *hearing officer abused his discretion* in *not admitting crucial and relevant evidence offered by the Appellant.* The following are acts that show the hearing officer abused his discretion and showed his personal bias in favor of the District Attorney's Office:

1. *He abused his discretion,* by his *denial of Appellant's proffered evidence* on the District Attorney's opinion of racial epithets, a newspaper article concerning the District Attorney's position on the use of racial epithets was illustrative of this. Said evidence was *relevant,* because one of the *main issues* was the use of the term "nigger" by Joseph Marcus, and how he still received a 100 promotional rating. (*Murphy transcript, p. 39*).

2. *He abused his discretion,* by *not raising Appellant's promotional score equal to Joseph Marcus and others,* when it was established that even though, Marcus had shown poor judgment and non-supervisorial conduct he may still be promoted and Appellant will not. (*Murphy transcript, p. 45*).

3. *He abused his discretion, in finding the transfer was proper based upon the Russell case.* Said finding was contradictory to the testimony of Mr. Murphy, that the *Russell* case had nothing to do with the transfer, *"It was time for (Appellant) to move on."* (*Murphy transcript, p. 52, L. 8-17*).

4. *He abused his discretion,* in *not permitting evidence* on the ethics question in the *Russell* case. Especially, when it was the District Attorney's position that *ethical considerations* was the reason Appellant had been downgraded in his Appraisal of Promotability score and transfer. (*Murphy transcript, p. 54-55 & p. 58-59*).

5. *He abused his discretion,* by *denying admission of Appellant's relevant evidence on Grade IV candidates' dismissals of cases.* He then made a finding that the dismissal of one case, justifies the actions taken against Appellant. When *Exhibit 38* showed other Grade IV candidates had *more cases dismissed* during the rating period than the Appellant, but they were rated 100. (*Murphy transcript, p. 61-66*).

6. *He abused his discretion,* by *justifying his findings on the transfer and rating score based upon the Russell case.* Said position was totally contrary to the testimony of Assistant District Attorney Dan Murphy. Mr. Murphy testified, *"Subpoenas not being issued or served wasn't important to me, it didn't matter if subpoenas were issued or served or the case was dismissed, Walls did not say it is my fault, I am sorry, if he did he would not be transferred."* (*Murphy transcript, p. 66, L. 17-28, p. 68*).

7. *He abused his discretion,* by *not permitting Appellant's attorney to cross-examine a witness on a "crucial issue" in the hearing.* Appellant's attorney was cross-examining Mr. Murphy about assumptions he had made about the motive of Appellant. Appellant's attorney was attempting to establish on what facts Mr. Murphy relied upon to make his assumptions. The hearing officer would not allow this cross-examination which was crucial evidence

to the challenged rationale for Appellant's transfer. (*Murphy transcript, p. 76-79*).

8. *He abused his discretion, and showed personal bias,* by *interrupting* and *arguing* with *Appellant's* attorney, *to prohibit* the *cross-examination of Mr. Murphy in a crucial area.* He instructed the witness not to answer a question by stating, *"You had given a complete, several times, unfortunately, explanation of your reasoning."* (*Murphy transcript, p. 82, L. 4-8*).

The foregoing examples illustrates that *Appellant did not receive a fair and impartial hearing.* There is no question, that the hearing officer abused his discretion in not admitting relevant evidence, exhibited bias by arguing with Appellant's counsel, and basing his decision on his personal opinions and not the evidence.

III. FINAL CONCLUSION.

Appellant has proven beyond a preponderance of the evidence he has been treated unfairly. The hearing officer has confused the facts, ignored the objective evidence and abused his discretion by basing a decision on his own personal opinion and not the evidence. Consequently, *Appellant respectfully requests that this honorable commission grant his objections to the hearing officer's decision and reject same.* Thereafter, *Appellant requests that the commission adopt, incorporated herein by this reference, the Appellant's Closing Brief, filed on December 16, 1991, inclusive of his statement of facts, summary of testimony, findings of facts, and conclusions of law, as its official decision in these cases.*

Thereby, concluding that in *Case No. 90-371, discrimination or other improper factors be found and the District Attorney be ordered to transfer Appellant back* into the *Hardcore Gang Unit in Compton.* Also, in *Case No. 90-386, discrimination* or *other improper factors* be found and an *order* be *issued changing Appellant's AP score to 100 or all A's.* In the alternative, this body find that the appraisal process was so totally unfair and subjective that the entire Grade IV promotional list and process be invalidated.

Dated: February 8, 1992

Respectfully submitted,

/s/ Fred Williams
FRED WILLIAMS, Chief
Legal Division, Local 660